

ADVISORY OPINION 2005-003

Any advisory opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121.135(4).

December 12, 2005

Rev. John Brewer
9903 Ponder Lane
Louisville, Kentucky 40272

Dear Rev. Brewer:

We received your written request for an advisory opinion on November 16, 2005, as to whether a candidate who is an officer of a nonprofit corporation may purchase advertising expressly advocating his election to office on the side of a bus owned by the same nonprofit corporation.

In your request, you provided us the following facts: You are the president of Alliance for Righteousness, Inc., a nonprofit corporation organized in the Commonwealth of Kentucky ("Alliance"). Alliance plans to raise funds by selling advertising space on the side of a reconditioned 40-foot bus owned by Alliance. You state that this advertising opportunity is available to all members of the public, for political and nonpolitical advertising, and the specific advertising rates are published on Alliance's website. As a candidate for State Representative for the 28th District in the 2006 primary election, you would like to take advantage of this opportunity by purchasing advertising that expressly advocates your candidacy at the fair market value.

Under KRS 121.175(1), expenditures for advertising services made directly and primarily in support of or in opposition to a candidate are considered "allowable campaign expenditures" by a candidate. In terms of reporting the payment on the candidate's election finance statement, the value of such advertising services is the fair

market value at the time the services are rendered. See 32 KAR 2:170 § 1(4). Fair market value is defined by Black's Law Dictionary as "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction." Black's Law Dictionary 1549 (7th ed. 1999). As you stated in your request, the rates for advertising on Alliance's bus are published on the internet and the rates charged to you will be the same rates available to the general public. Based on these facts provided, this arrangement would constitute an arm's length transaction in an open market and payment at fair market value for the advertising services would be an allowable expenditure.

Please be aware that if the purchase price was not fair market value, you would be inadvertently accepting an in-kind contribution by Alliance. Under KRS 121.015(6)(c), the definition of a "contribution" includes advertising with a value of more than \$100.00 in the aggregate in any one election which is furnished without charge or at a rate which is less than the rate normally charged for the advertising. If Alliance offered the advertising services to you for free or at a reduced rate otherwise not available to the general public, such services would constitute an in-kind contribution to your campaign by a corporation and corporate contributions are not permissible under Kentucky law. Section 150 of the Kentucky Constitution expressly prohibits a corporation, including a nonprofit corporation, from giving money or anything of value to be used to influence the result of an election. See also KRS 121.025 and KRS 121.035. In addition, 32 KAR 2:170 § 1(3) provides that "[a] candidate shall not accept the use of the assets of any corporation unless the fair market value is billed to the campaign and paid for with campaign funds."

Therefore, a candidate who is an officer of a nonprofit corporation may purchase advertising expressly advocating his or her election to office on the side of a bus owned by the same nonprofit corporation so long as he or she pays fair market value for the advertising services. Further, the burden is on the candidate to sufficiently establish fair market value.

Please keep in mind that this advisory opinion is based on the specific facts set forth in your written request. If you have any questions concerning this advisory opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,

Connie L. Verrill
General Counsel